LIBRARY
SUPREME COURT, U. S.
MAR 6 19
MICHAEL RODAK, JR.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1114

ANGELO DEL PIETRO,
Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

MERLE L. SILVERSTEIN
ROSENBLUM and GOLDENHERSH
7777 Bonhomme, Suite 1414
Clayton, Missouri 63105
(314) 726-6868
Attorneys for Petitioner

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutory Provisions Involved	3
Statement of Facts	3
Reasons for Granting the Writ	6
Conclusion	11
Appendix A—Judgment Below	A-1
Appendix B—Motion for Rehearing Denied	A-3
Appendix C—Statute	A-5

AUTHORITIES

Cases

United States v. Riehl, 460 F.2d 454, 459 (3rd Cir. 1972) 8

United States v. Schullo, Nos. 73-1490, 73-1544 (8th Cir. January 3, 1975) 6, 7, 9

Statute

Title 18, United States Code, § 1955 ..... 2, 3, 5, 6

Miscellaneous

Hearings on S. 30 before the sub. comm. on the study of monopoly power of the senate sub. comm. of the judiciary, 91st Cong., 1st sess., 383, 395, 425, 449 and 534 (1969) 7

The report of the House committee on the Judiciary Report No. 91-1549, 91st Congress, second session (U.S. Code Cong. Admin. News, 1970, p. 4029 8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. .....

ANGELO DEL PIETRO,
Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit

The Petitioner, ANGELO DEL PIETRO, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceedings on January 3, 1975.

OPINIONS BELOW

No formal opinion was rendered by the District Court. The opinion of the Court of Appeals has not yet been reported, and is reproduced in Appendix A to petition filed in No. 74-1080 (petition for certiorari filed by codefendants)

JURISDICTION

The judgment of the Court below (Appendix A, *infra*, p. A-1) was entered on January 3, 1975, and last Motion for Rehearing En Banc was denied on February 27, 1975 (Appendix B, *infra*, p. A-3). The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

Petitioner, along with seven others, was convicted on Count I of a violation of Title 18, Section 1955 (prohibiting illegal gambling business) and a conspiracy to violate that Section (Count II). The evidence shows that each defendant operated his own individual bookmaking operation. They did not share phones, locations, customers, or profits and losses, and there was no central bookkeeping or accounting system. Defendants exchanged "line information",[1] and offered to place "layoff"

---

[1] Line information refers to the point spread or odds on the various sporting events.

bets[2] among one another. Sometimes these layoff bets were refused, and if a layoff bet was accepted, then the bookmaker placing the bet would pay the same markup (a 10% commission) as any other individual customer would pay. There was no agreement that layoff bets had to be accepted. The questions presented are:

1. Do eight separate and independent bookmakers, who exchange line information and place voluntary layoff bets among themselves, conduct or finance one "illegal gambling business" in violation of Title 18, Section 1955?

2. Are bookmaker customers of a bookmaker to be regarded as the same as non-bookmaker customers for the purpose of computing the "five or more persons" requirement under Title 18, Section 1955, when all customers (bookmaker and non-bookmaker) are charged the same markup and given the same line?

STATUTORY PROVISION INVOLVED

Title 18, United States Code, Section 1955, set forth in Appendix C, *infra*, p. A-5).

STATEMENT OF FACTS

Petitioner was convicted, along with seven others, of a violation of Title 18, Section 1955 (Count I), and of a conspiracy to violate the same Section (Count II). The Court of Appeals for

---

[2] Layoff betting is a bet or wager placed by one bookmaker with another bookmaker which is necessitated by the influx of an imbalance of bets and wagers on a given sporting event and which has the effect of distributing the said bets and wagers, thus minimizing the risk of substantial loss.

the Eighth Circuit affirmed the convictions on Count I by a 2-1 vote, and unanimously reversed Count II. The last Motion for Rehearing En Banc was denied on February 27, 1975.

The case at trial was presented almost entirely by Stipulations, involving evidence obtained from a wiretap on the telephone of codefendant Lancaster. The Stipulations set forth that each defendant operated a gambling business in St. Louis, Missouri. It was stipulated that Christophel knew only Lancaster and one other defendant (Transcript p. 359); that Vogt knew only Lancaster (Transcript p. 367); and that Lonsberry knew and relayed other customers bets and wagers to only Petitioner Lancaster (Transcript p. 363). Petitioner Del Pietro knew and dealt with only Lancaster. Each stipulation further sets forth each bookmaker operated out of a different location, and used telephones there to talk with, give line information to and take bets from their regular customers.

In addition to the Stipulations, a hearing was held, as to Lancaster and Lonsberry only, in which the Government's expert witness, F.B.I. Agent T. C. Whitcomb, testified that there was, by the exchange of line information and layoff bets, a "joint operation" and "loose affiliation" among individual bookmakers (Transcript p. 400), but that each defendant owned his own business, retained his own winnings, paid his own losses, and operated a separate business (Transcript pp. 403-408). He also agreed that none of the defendants shared in the control of any of the other defendants' businesses (Transcript p. 409). His further conclusions, based on his examination of the wiretaps, exhibits and stipulations, were that each defendant owned 100% of his bookmaking business (Transcript p. 409), that there was no sharing of profits (Transcript p. 417), that sometimes layoff bets were refused by the bookmaker to whom they were offered (Transcript p. 426), that line information sometimes differed as between the defendants and their customers (Transcript p. 429), that each bookmaker making a layoff bet with another

bookmaker paid the same markup (a 10% commission) as any of the individual customers of the bookmaker would pay (Transcript p. 430) and that in summary, the evidence showed "eight separate bookmaking businesses each owned separately by each of these defendants" (Transcript p. 450). There was no evidence offered by the Government that any defendant was, in any way, linked to syndicated crime, that interstate gambling was involved or that any defendant was involved in a larger network of layoff betting.

Lancaster and Lonsberry presented their own expert witness, Lewis W. Jones, who had been a bookmaker for approximately thirty-six years (Transcript p. 456). He gave his opinion that each defendant operated a separate business independent of each other (Transcript p. 462).

The only links between the eight separate bookmaking operators here were the voluntary exchange of line information and layoff bets, which were carried on by each individual bookmaker in accordance with his individual business needs.

The Eighth Circuit panel affirmed, by a 2-1 vote, all convictions on Count I, holding that the exchange of line information and layoff betting among eight separate and independent bookmakers synthesized them into one illegal gambling business under Section 1955. Judge Lay filed a strong dissent. The panel unanimously reversed the Petitioners' convictions of a conspiracy to violate Section 1955 (Count II) on the grounds of double jeopardy.

REASONS FOR GRANTING THE WRIT

There are two compelling reasons for granting the Writ of Certiorari. First, two vague statutory provisions, critical to the application and interpretation of Section 1955, can be defined by this Court. Second, the respective roles of the Federal and State governments and courts in the regulation of local gambling activities, and the parameters of Section 1955. can be established.

1. The majority and the dissent in the instant case agree that an "illegal gambling business" applies only to large-scale operations. The statutory definition is that an illegal gambling business . . . "involves five or more persons who conduct, finance, manage, supervise, direct or own all or part of such business." Nowhere does the statute or the legislative history define what precisely constitutes a "business". It might mean "activity", "calling", "commercial enterprise", "occupation", "corporation", "employment", "mercantile transaction", or a dozen other definitions. The majority and dissent in the instant opinion differ as to whether a single "business" existed here. It is clear, from the legislative history, that Congress intended a "business" to encompass only an integrated large-scale gambling operation, whose profits flow to fund syndicated crime.[*] Therefore to include all the persons who are involved

---

[*] Judge Bright, in *United States v. Schullo, Nos. 73-1490, 73-1544* (8th Cir. January 3, 1975), recognized the difficulty of defining the term "business", calling it "nebulous and elastic in scope". Slip Opinion at p. 7. He holds that because the jury could conclude each defendant was involved in a "network" or "loose affiliation", they came within the purview of Section 1955. Slip Opinion at p. 11.

In *Schullo,* the Government's evidence was that five men (three appellants and two others) played an integral part in the conduct of Wolk's book. Appellants were indicted and convicted of only a substantive violation of Section 1955. In the instant case, the Government's expert witness testified that eight separate businesses ex-

in such large operations, Congress used several verbs, such as, "conduct, finance, manage, supervise, direct and own", to describe the various roles individuals may have in such a business.

Judge Lay's opinion properly concludes that the "business" which Congress intended to cover is not present in the instant case. Each Petitioner operated ("conducted", "owned") his own business, retained ("financed") his own winnings and paid ("financed") his own losses, and had absolute control ("managed", "supervised", "directed") his own business and record-keeping. Even though at oral argument the government conceded that the exchange of line information among the defendants did not make their individual operations into a unified business (pp. A-12-13), the majority nevertheless concluded that the exchange of layoff bets made their eight separate businesses into a single illegal gambling business for the purpose of Section 1955. The majority's conclusion is startling when the uncontroverted testimony of the government's expert witness, Agent Whitcomb, was that the layoff bets were sometimes refused by the other defendants, and that each layoff bet was placed at the normal 10% markup charged to all other customers. Certainly such a haphazard, unorganized and unreliable method of assuring the equalizing of one's bets cannot

---

isted, which perhaps explains why the Government tried to rely on a conspiracy theory to link these Petitioners together.

The legislative history as to what Congress meant by "business" is admittedly sparse. In addition to Judge Bright's citations in *Schullo*, which are susceptible of differing interpretations, the various reports and testimony from the Senate hearings lead one to conclude that more than a "loose affiliation" has to be involved for activity to constitute a "business". Congress wanted to proscribe gambling "businesses" which were large-scale, unified organizations with corporatelike structure, having bosses and low-level employees, whose profits flowed to syndicated crime. In addition to the complete analysis of the Legislative History by Judge Lay in the instant case, *see also Hearings on S. 30 before the Sub. comm. on the Study of Monopoly Power of the Senate Sub. comm. of the Judiciary, 91st Cong., 1st Sess., 383, 395, 425, 449 and 534 (1969).*

constitute "conducting" or "financing" a single illegal gambling "business". In short, the unified large-scale gambling business, with direct participation of five or more persons and linked to funding syndicated crime which Congress intended to proscribe, is not found when eight separate one-man bookmaking operations occasionally lay off bets and exchange line information with each other.

The second definition requiring statutory construction involved in the instant case, is how to compute whether "five or more persons" are involved. Both the majority and the dissent agree that customers of the business are not to be included in this computation. *See also United States v. Riehl*, 460 F. 2d 454. 459 (3rd Cir. 1972). The Report of the House Committee on the Judiciary, Report No. 91-1549, 91st Congress, Second Session (U.S. Code Con. Admin. News, 1970, p. 4029) states as follows:

> "(This) section applies generally to persons who participate in the ownership, management, conduct of an illegal gambling business. The term 'conducts' refers to both high-level bosses and street-level employees. It does not include the player in an illegal game of chance, *nor the person who participates in illegal gambling activity by placing a bet.*" (Emphasis added)

It is, therefore, firmly established that a person, any person, merely making a bet with a bookmaker is not to be counted in determining if "five or more persons" are involved in a business. In this case, these defendants, when placing a layoff bet, were actually no different than any other customer of the bookmakers. The same markup was charged to all betting customers and certain bets were refused by the bookmaker to whom bets were offered. In short, the bookmaker who desired to place a layoff bet with a second bookmaker was simply a customer of that

bookmaker, and, therefore, not to be counted in determining if "five or more persons" were present.[4]

Two critical definitional issues are raised in this case—the definition of "business" and the computation of "five or more persons." These points are basic to the application of Section 1955, and will continue to arise in every prosecution under this Section. A good example of the recurring nature of these definitional problems is amply illustrated by the case of *United States v. Schullo*, No. 73-1490, 73-1544, which was decided by another Eighth Circuit panel on the same day as the instant case. In a case of similar facts and issues, that panel by a 2-1 vote, affirmed the defendants' convictions. However, Judge Heany, dissenting, adopted Judge Lay's dissenting opinion in the instant case. Therefore, because of the different compositions of the respective panels involved, an anomalous result has occurred within the Eighth Circuit; two judges (Heany and Lay) have decided that Section 1955 would not apply to separate and independent bookmakers, and two other judges (Bright and Stephenson) have decided that Section 1955 would apply. This split among the judges within one Circuit indicates the sharp divergence of judicial opinion as to the meaning and application of the definitions contained in the statute, and demonstrates the imperative need for review by this Court. It means that results in similar cases in the Eighth Circuit are to be decided by chance and the luck of the draw in the make-up of the panel hearing the matter. If an appellant were to find Judges Lay and Heany on his panel, he would go free; if Judges Stephenson and Bright, he would be imprisoned. While all agree that justice

---

[4] Petitioner is aware that this argument has been raised in other cases which are amply set forth and distinguished by Judge Lay in his dissenting opinion, and nothing more needs to be added here, except that the grant of certiorari here would resolve the respective conflicts and differences. Judge Lay in his dissenting opinion also cogently illustrates that the majorities' concept of a gambling "business" would render the statutory requirement of "five or more persons" meaningless. (P.A. 14)

should be blind in the sense of equal treatment for all, no one can defend a system of justice governed by happenstance and luck. That this Court should lay to rest here and now.

2. Judge Lay concludes that "the inevitable result of (the majority's) decision is to subject all bookmakers to federal prosecution, a result which is contrary to the language and purpose of the Act." (p. A-12)

It is a fact that even the smallest bookmaking operation must receive some line information from somewhere, and must place excess bets with another bookmaker to avoid an imbalance in the bets he takes. Therefore, if federal prosecutors merely have to show this minimum activity in order to invoke Section 1955, they will be able to federally charge every bookmaker, no matter how small and how isolated from organized crime,[5] and the effect of this would be the preemption of the State governments from the policing of local gambling activities. These results are certainly not what Congress intended when it enacted Section 1955.

If the majority's decision is allowed to stand, the resulting burden on the federal courts, through the countless prosecutions of small, individual bookmakers, could be immense. State and municipal prosecutors, faced with their own budgeting problems, would be eager to abdicate the responsibility to federal prosecutors for policing local and petty gambling activity. Cases which properly belong in state and municipal courts would be clogging the federal dockets.

---

[5] The only practical deterrent to a federal prosecutor charging a small time bookmaker is the requirement that $2,000 be wagered in "any single day". But, with inflation and the growing interest of Americans in sporting events, this is hardly any requirement at all. Under the majority's construction, the federal prosecutors could prosecute the five participants of a weekly, friendly poker game, provided there were a total of $2,000 in wagers in one evening.

Title 18, Section 1955, was enacted only five years ago, and has already been the source of countless trials and appellate review, including review by this Court. At this juncture, with ample factual patterns based on scores of typical federal prosecutions, it becomes important and almost imperative for this Court to focus on the basic elements and definitions of this offense, and to define its scope and its relationship in our federal criminal jurisprudence.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Eighth Circuit Court of Appeals.

Respectfully submitted

MERLE L. SILVERSTEIN
ROSENBLUM and GOLDENHERSH
7777 Bonhomme, Suite 1414
Clayton, Missouri 63105
(314) 726-6868
Attorneys for Petitioner

APPENDIX

APPENDIX A

JUDGMENT

(Filed January 3, 1975)

United States Court of Appeals
For the Eighth Circuit

No. 73-1526

September Term, 1974

The United States,
Appellee,
vs.
Ellis Athanas, William Christophel, Angelo Del Pietro, Clifford Alford Lancaster Alias Preacher, Appellant, James Lonsberry, Eugene Schaefer, Frank Vinceri, John Edward Vogt.

Appeal from the United States District Court for the Eastern District of Missouri.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Missouri and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment of Count II in this cause be and the same is hereby reversed.

And it is further ordered by this Court that this cause be and the same is hereby affirmed in all other respects in accordance with the majority opinion of this Court this day filed herein.

January 3, 1975

APPENDIX C

United States Court of Appeals
for the Eighth Circuit

Appeals From the United States District Court for the
Eastern District of Missouri

September Term. 1974

No. 73-1506
The United States, Appellee,
vs.
Eugene Schaefer, Appellant.

No. 73-1526
The United States, Appellee,
vs.
Angelo Del Pietro, Appellant.

No. 73-1577
The United States, Appellee,
vs.
Clifford Alford Lancaster, etc., Appellant.

No. 73-1578
The United States, Appellee,
vs.
James Lonsberry, Appellant.

No. 73-1611
United States of America, Appellee,
vs.
John Edward Vogt, Appellant.

No. 73-1617
The United States, Appellee,
vs.
William Christophel, Appellant.

(Filed February 27, 1975)

The Court having considered petitions for rehearing en banc filed by counsel for appellee and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be and it is hereby, denied.

Considering the petition for rehearing en banc as petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

February 27, 1975

APPENDIX D

§ 1955. Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business

receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

Added Pub.L. 91-452, Title VIII, § 803(a), Oct. 15, 1970, 84 Stat. 937.